

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Application of Southern California Edison  
Company (U338E) for Approval of the Results  
of Its 2015 Preferred Resources Pilot Request  
for Offers.

Application 15-12-013  
(Filed December 15, 2015)

**THE OFFICE OF RATEPAYER ADVOCATES' COMMENTS ON THE PROPOSED  
DECISION APPROVING THE APPLICATION OF SOUTHERN CALIFORNIA  
EDISON COMPANY FOR TWO SOLAR PHOTOVOLTAIC PROJECTS**

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## I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Office of Ratepayer Advocates (ORA) submits these comments on the July 26, 2016 *Proposed Decision Approving the Application of Southern California Edison Company for Two Solar Photovoltaic Projects* (Proposed Decision) in Application (A.) 15-12-013 (Application). The Proposed Decision "approves the results of Southern California Edison Company's (SCE's) 2015 Preferred Resources Pilot Distributed Generation Request for Offers, and authorizes SCE to recover in rates payments made pursuant to two power purchase agreements with SunEdison [SunEdison PPAs] for in front of the meter solar photovoltaic projects."<sup>1</sup>

ORA recommends that the Commission reject the Proposed Decision because it commits significant factual and legal errors. The Proposed Decision commits legal error because it violates the Commission's own procedural rules, considers and decides issues beyond those identified in the Scoping Memo,<sup>2</sup> and lacks an evidentiary record sufficient to support its findings. The Proposed Decision also improperly shifts the burden of proof onto intervenors. For these reasons and the reasons set forth below, the Commission should reject the Proposed Decision.

## II. Discussion

### A. **The Proposed Decision's reliance on the goals and objectives of the Preferred Resource Pilot program to justify its approval of the Preferred Resource Pilot Distributed Generation Request For Offer and SunEdison PPAs is outside the scope of the proceeding**

SCE's Preferred Resource Pilot (PRP) program is, by SCE's own request,<sup>3</sup> not included within the scope of issues identified for this proceeding. The Scoping Memo limited the proceeding to the following issues:

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<sup>1</sup> Proposed Decision, p. 2.

<sup>2</sup> Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, March 4, 2016 (Scoping Memo).

<sup>3</sup> Prehearing Conference (PHC), February 29, 2016, PHC Reporter's Transcript, p. 19, lns. 3-19:

*(footnote continues on next page)*

- Was the SCE PRP Distributed Generation Request for Offer (DG RFO) conducted in a reasonable and fair manner?
- Are the PPAs Renewable Portfolio Standard (RPS) eligible and will they fulfill SCE's RPS Category 1 needs?
- Are the terms of the PPAs reasonable?
- Are the prices of the PPAs reasonable, compared to other similar projects procured under the RPS program or other procurement mechanisms?<sup>4</sup>

SCE affirmed this understanding of the proceeding's scope and noted that the Scoping Memo "limited the scope of this proceeding to the approval of the PPAs, not the PRP as a whole."<sup>5</sup> Nevertheless, the Proposed Decision not only infers that SCE's PRP program and its objectives are reasonable,<sup>6</sup> but uses the PRP's "goals" and "objectives" as the basis for determining that the PRP DG RFO and the SunEdison PPAs are reasonable. For example, the Proposed Decision finds that "[t]he terms of the SunEdison PPAs, including prices, are

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*(footnote continued from previous page)*

Mr. Miley [ORA]: I guess probably make this more clear in our comments, but on scope I would want to make sure that ORA's position is understood and that what's not - - Edison is not asking for approval of the PRP program. And it would be important to ORA that any proposed decision that comes out of this proceeding not reach a determination on the reasonableness of the program as a whole.

Commissioner Florio: Two contracts, that's all it's about.

ALJ Fitch: That's my understanding. And I think Edison's response made that pretty clear from their perspective. I mean do you want to speak to that?

Ms. Meiers-De Pastino [SCE]: No. I think you Honor has it exactly right.

ALJ Fitch: Yeah. That's my understanding as well. We would not reach a conclusion about the preferred resources pilot overall. It's just about the two contracts under this particular RFO, which is in itself only a portion of the PRP as I understand it.

<sup>4</sup> Scoping Memo, p. 2 [cite omitted].

<sup>5</sup> SCE-2, p.1, citing Scoping Memo, p. 2.

<sup>6</sup> See Proposed Decision, Conclusion of Law 2, p. 21. ("The terms and prices of the SunEdison PPAs are reasonable in light of the objectives served and compared to similar projects.")

reasonable in light of the PRP objectives”<sup>7</sup> and “[there] is sufficient evidence to establish that the PPAs will measurably contribute towards accomplishing the PRP’s goals.”<sup>8</sup> The Proposed Decision’s reliance on the goals and objectives of the PRP to justify its approval of the PRP DG RFO and SunEdison PPAs constitutes a violation of the Commission’s own Rules and failure to proceed in the manner required by law.<sup>9</sup>

Rule 7.3(a) requires that the assigned Commissioner issue a scoping memo for the proceeding, “which shall determine . . . the issues to be addressed.” In *Southern California Edison Company v. Public Utilities Commission (Edison)*, the Court of Appeal of California (Court) held the Commission’s Rules have the “force and effect of law” and failure to adhere to its Rules is a violation of law.<sup>10</sup> The Proposed Decision commits the same, or similar, legal error as confronted in *Edison*. There, the Court annulled D.04-12-056, in part, because the Commission decided issues beyond the issues set forth in the Scoping Memo and because the Commission violated its own Rules by considering new issues. Thus, *Edison* found that the “PUC’s failure to comply with its own rules concerning the scope of issues to be addressed in the proceeding therefore [is] prejudicial.” Commissioner Sandoval recently recognized the importance of this legal requirement in her dissent in D.15-05-051.<sup>11</sup>

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<sup>7</sup> Proposed Decision, p. 18.

<sup>8</sup> Proposed Decision, p. 18.

<sup>9</sup> Public Utilities (Pub. Util.) Code Section 1757.1(a)(2). “(a) In any proceeding other than a proceeding subject to the standard of review under Section 1757, review by the court shall not extend further than to determine, on the basis of the entire record which shall be certified by the commission, whether any of the following occurred: . . . (2) The commission has not proceeded in the manner required by law.”

<sup>10</sup> *Southern California Edison Company v. Public Utilities Commission* (2006) 140 Cal. App. 4th 1085, 1092.

<sup>11</sup> D.15-05-051, dissent of Commissioner Sandoval, p. 3:

The Assigned Commissioner’s Scoping Memo creates the universe of issues the proceeding is to examine, building a scaffold that supports due process and reasoned decision-making. The Scoping Memo apprises the parties and the public of what’s at stake in the proceeding by specifying the issues the proceeding will examine, the topics on which the parties should comments in the briefs and arguments, and subjects for which they should submit evidence.

On November 5, 2015, the Commission adopted D.15-11-024, *Order Modifying Decision 15-05-051 and Denying Rehearing of the Decision, as Modified*.

Here, SCE requested that the Commission review the Application under SCE's authority to procure resources in order to meet its RPS requirement.<sup>12</sup> The Commission's Scoping Memo narrowly tailored the proceeding to that request. Consistent with the direction of the Scoping Memo, ORA analyzed the reasonableness of the terms and prices of the SunEdison PPAs, the RPS need for the PPAs, and the reasonableness of SCE's conduct with respect to the PRP DG RFO.

Further, SCE has never requested approval of its PRP generally and, consequently, the Commission has never conducted a reasonableness review or authorized the PRP. SCE does not request approval of its PRP or its objectives in this proceeding. Parties did not have the opportunity to examine and serve testimony on the PRP's overall objectives and goals or whether the proposed SunEdison PPAs are reasonable in light of the PRP. Nor did parties have an opportunity to request evidentiary hearings on these PRP issues. Moreover, parties did not have the opportunity to litigate whether the PRP is consistent with statutory and Commission guidelines for considering utility proposed demonstration (pilot) projects.<sup>13</sup> It is therefore prejudicial for the Proposed Decision to now conclude that the previously precluded PRP and its objectives should be used as "context"<sup>14</sup> to find the RFO and the SunEdison PPAs reasonable. Accordingly, the Proposed Decision's reliance on the PRP's goals and objectives to establish the reasonableness of the RFO and the SunEdison PPAs is outside the scope of the proceeding and constitutes a failure to proceed in the manner required by law.<sup>15</sup>

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<sup>12</sup> Application, p. 16. *See also* SCE-2, p. 1 [cite omitted].

<sup>13</sup> *See* Pub. Util. Code Section 451 which sets forth guidelines the Commission must consider when evaluating utility proposed demonstration (i.e., pilot) projects. *Also see* the Electric Program Investment Charge (EPIC) Program at D.12-05-037, Ordering Paragraph (OP) 17, p. 106 and R.14-08-013 et al. The Commission is considering policies directed integrating distributed energy resources. The Commission has not made final decisions on locational benefits and on demonstration projects in its Distributed Resources Plans proceeding(s).

<sup>14</sup> Proposed Decision, p. 18. ("The context provided by SCE in its supplemental testimony is sufficient for us to determine that the PPA contracts are reasonably priced in light of the PRP's objectives, prevailing market conditions, and results from SCE's other procurement mechanisms.")

<sup>15</sup> Pub. Util. Code Section 1757(a)(2).



The Proposed Decision further errs in stating that, “[t]he terms of the SunEdison PPAs, including prices, are reasonable in light of the PRP objectives”<sup>16</sup> and “[there] is sufficient evidence to establish that the PPAs will measurably contribute towards accomplishing the PRP’s goals.”<sup>17</sup> Notably, the Proposed Decision then finds that “[t]he PRP is an internal effort to SCE and is not at issue in this proceeding”<sup>18</sup> and states that “[t]he Commission need not determine whether the PRP is reasonable to determine that SCE acted reasonably in the conduct of its RFO.”<sup>19</sup> The Proposed Decision’s rationale is inconsistent. It simultaneously states the PRP is not at issue and the Commission need not make a determination on the PRP’s reasonableness while also asserting that the RFO and SunEdison PPAs are reasonable because they satisfy the PRP’s goals. The SunEdison PPAs cannot be found to be reasonable based upon PRP objectives and goals, if those objectives and goals have not been found reasonable. This is consistent with Decision (D.).14-03-003, Track 4 Long-Term Procurement Plan Decision (Track 4 Decision). There, SCE also identified its internal PRP, but did not request Commission authority for it. Thus, in the Track 4 Decision, the Commission found:

The [Preferred Resources] Living Pilot is not being proposed by SCE at this time, therefore it is not possible now to make any determination about its viability or ability to meet LCR needs in the LA Basin.<sup>20</sup>

In sum, SCE did not present evidence in support of the reasonableness of its PRP in connection with the instant application, and, therefore, the PRP may not be used as foundation for the reasonableness of the two SunEdison PPAs. The Commission must determine that the PRP in whole is reasonable in order for the PRP to serve as justification for approving the two SunEdison PPAs, each of which are priced above comparable RPS projects.

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<sup>16</sup> Proposed Decision, p. 18

<sup>17</sup> Proposed Decision, p. 18.

<sup>18</sup> Proposed Decision, Finding of Fact 4, p. 20.

<sup>19</sup> Proposed Decision, p. 17.

<sup>20</sup> D.14-03-003, Finding of Fact 57, p. 129.

**B. SCE's Supplemental Testimony did not expand the scope of the proceeding**

The proceeding's record evidence does not support approving SCE's Application. As detailed below, SCE's December 15, 2015 Prepared Testimony failed to provide sufficient evidence and justifications to show that the SunEdison PPAs are necessary and reasonable under RPS. The Scoping Memo issued clarifying questions that provided SCE an opportunity to submit additional evidence in support of its Application.<sup>21</sup> In response, SCE served Supplemental Testimony that simply reiterated its positions in Prepared Testimony. Therefore, the Proposed Decision errs in stating "[t]he context provided by SCE in its supplemental testimony is sufficient for us to determine that the PPA contracts are reasonably priced in light of the PRP's objectives, prevailing market conditions, and results from SCE's other procurement mechanisms."<sup>22</sup>

SCE's Supplemental Testimony provided no new evidence or "context" regarding the PRP, prevailing market conditions, or SCE's results from other procurement mechanisms. The Proposed Decision's reliance on the Supplemental Testimony to find the SunEdison PPAs reasonable is incorrect because all the evidence the Proposed Decision relies upon is found in SCE's Prepared Testimony. For example, the Proposed Decision states:

As provided in its Supplemental Testimony, SCE's stated goal in administering the PRP is to assess its ability to procure a diverse mix of resources in the PRP region by 2018. SCE has also established that the presence of in-front-of-the-meter distributed generation resources in the PRP region is important to meeting that goal, and that its other procurement mechanisms have not succeeded in obtaining those resources. Approving the PPAs will increase the amount of in-front-of-the-meter [IFOM] DG resources acquired in the PRP region from zero megawatts (as of January 1, 2016) to almost 2.2 MWs.<sup>23</sup>

With regard to the PRP's purported goal to assess the ability to procure resources in the PRP region by 2018, the Prepared Testimony states "SCE needs to know by 2018 if it can

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<sup>21</sup> Scoping Memo, pp. 2-3.

<sup>22</sup> Proposed Decision, p. 18.

<sup>23</sup> Proposed Decision, pp. 17-18 [cites omitted].

acquire, deploy, and measure the performance capabilities of a mix of preferred resources . . . in the PRP Region.”<sup>24</sup> With respect to SCE’s desire to procure IFOM DG and the failure of existing mechanisms to procure those resources, the Prepared Testimony states, “SCE launched the renewable distributed generation (DG) PRP request for offers solicitation (PRP DG RFO) because existing procurement mechanisms were unable to supply sufficient quantities of in-front of the meter (IFOM) renewable DG resources. IFOM renewable DG resources are a key component of a diverse preferred resources portfolio [.]”<sup>25</sup>

With regard to market conditions and other procurement mechanisms, the Supplemental Testimony claims the lack of market response necessitated the PRP-specific PRP DG RFO.<sup>26</sup> It then identifies “several solicitations, including SPVP [the Solar Photovoltaic Program], RAM [the Renewable Auction Mechanism], LCR [the Local Capacity Requirement RFO], and RPS” and states “existing procurement mechanisms and Commission programs did not yield sufficient quantities of IFOM renewable DG in the PRP Region.”<sup>27</sup> SCE again had already identified these issues in Prepared Testimony.<sup>28</sup> SCE’s Supplemental Testimony simply reiterated the same points made in Prepared Testimony and, therefore, did not provide any additional “context” to the record.

The only issue that the Supplemental Testimony provides some clarification on is the relationship between the SunEdison PPAs and the Electric Program Investment Charge (EPIC) program for which the Supplemental Testimony only asserts that there is no duplicative funding.<sup>29</sup> However, avoiding duplication of funding is only a determinative element in the sense that both state statute<sup>30</sup> and Commission policy<sup>31</sup> generally prohibit the funding of

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<sup>24</sup> SCE-1, p. 2.

<sup>25</sup> SCE-1, p. 3.

<sup>26</sup> SCE-2, p. 10.

<sup>27</sup> SCE-2, p. 10.

<sup>28</sup> SCE-1, p. 3.

<sup>29</sup> SCE-2, p. 14. The relationship between the PRP DG RFO and SunEdison PPAs to EPIC activities was already addressed in Prepared Testimony. (*See*, SCE-1, p. 5.)

<sup>30</sup> *See* Pub. Util. Code Sections 740.1, 2851(c)(1).

<sup>31</sup> *See* D.12-05-014, p. 9; D.12-12-031, Conclusion of Law 5, p. 90; and D.12-05-037, OP 2(f), p. 99.

duplicative efforts. The prohibition against the duplication of funding is also a fundamental tenet of the EPIC program.<sup>32</sup>

Most importantly, even if SCE had produced relevant new evidence in the Supplemental Testimony, the scope of the proceeding was not amended to include such evidence. The Scoping Memo states that it required SCE to respond to questions in Supplemental Testimony because “[the Commission’s] understanding and deliberations would benefit from some additional information about the context for this RFO and these contracts.”<sup>33</sup> If the Supplemental Testimony had provided any new information, a new ruling should have been issued to amend the scope of the proceeding to include the new information. The Supplemental Testimony did not provide any new information and no such ruling was issued. Nor did SCE file a motion requesting the scope be amended to include additional scoping issues. Any responses to the Scoping Memo’s questions that are not specifically related to the four scoping issues would be outside the scope of the proceeding.

**C. The Proposed Decision errs in concluding the terms and prices of the SunEdison PPAs are reasonable because of the PRP’s objectives**

The Proposed Decision states that the objectives of the RFO are the same as the stated goals for the PRP<sup>34</sup> and concludes that “[t]he terms and prices of the SunEdison PPAs are reasonable in light of the objectives served and compared to similar projects.”<sup>35</sup> The PRP, however, is not included in the Application’s prayer for relief.<sup>36</sup> Rule 2.1 states, “[a]ll applications shall state clearly and concisely the authorization or relief sought; shall cite by appropriate reference the statutory provision or other authority under which Commission authorization or relief is sought; [and] shall be verified by at least one applicant (see, Rule. 1.11).” These Rules are meant to provide parties proper notice of an Application and what the Applicant seeks.

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<sup>32</sup> D.12-05-037, OPs 2(f), 12(e), pp. 99, 104. *See also* D.13-11-025, p. 96.

<sup>33</sup> Scoping Memo, p. 2.

<sup>34</sup> Proposed Decision, p. 17.

<sup>35</sup> Proposed Decision, Conclusion of Law 2, p. 21.

<sup>36</sup> Application, Prayer for Relief, pp. 16-17.

Here, SCE's Application requested approval of the PPAs under RPS authority.<sup>37</sup> SCE explicitly stated, "SCE's Application seeks approval of the PPAs under SCE's authorized 2014 and 2015 Renewable Portfolio Standard (RPS) Procurement Plans and Public Utilities Code Section 399.11 *et seq.*"<sup>38</sup> Nowhere does SCE request that the Commission determine that the PRP and its stated goals are reasonable. Accordingly, there is no basis in the Application for the Proposed Decision to conclude the PRP's objectives should be considered in this proceeding. There is also no foundation to conclude the PPA's terms and prices are reasonable based on any PRP objective. Accordingly, the Proposed Decision's reliance on the PRP's goals and objectives, neither of which are within the scope of the proceeding or requested by SCE in its application, to establish the reasonableness of the RFO and the SunEdison PPAs constitutes a failure to proceed in the manner required by law.<sup>39</sup>

**D. It is the Applicant's burden to show all aspects of its application are reasonable**

The Proposed Decision commits legal error in stating SCE's RFO is reasonable because it "is supported by the fact that ORA does not dispute the fairness of the process by which the PRP DG RFO was conducted."<sup>40</sup> This finding improperly shifts the burden of proof from the applicant to the intervenor, which contradicts longstanding Commission policy and judicial precedent.<sup>41</sup> In fact, the Proposed Decision acknowledges this precedent stating:

As the applicant utility in a ratesetting proceeding, SCE bears the burden of proof to demonstrate that the expenses it seeks to recover through rates are reasonable. The Commission has ruled that an applicant has the burden of affirmatively establishing reasonableness in 'all aspects' of its application.<sup>42</sup>

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<sup>37</sup> Application, Prayers for Relief 5 & 7, p. 16. *See also* SCE Reply to Protest, Section B, titled "SCE Application and Testimony Expressly Cited the RPS as the Authority for the Commission's Approval," p. 4.

<sup>38</sup> SCE-1, p. 1 [cite omitted].

<sup>39</sup> Pub. Util. Code Section 1757(a)(2).

<sup>40</sup> Proposed Decision, p. 16.

<sup>41</sup> *See* D.08-12-058, p. 17.

<sup>42</sup> Proposed Decision, p. 16, citing *Re Southern California Edison Company* (1983) D.83-05-036 and *In the Matter of the Application of California Water Company* (2003) D.03-09-021, p. 17.

In citing an intervenor's silence in order to support a conclusion, the Proposed Decision ignores the longstanding Commission precedent that "[i]ntervenors do not have the burden of proving the unreasonableness of [the utility's] showing."<sup>43</sup> Simply, an intervenor's silence on any particular issue neither concedes assent nor confers reasonableness to any aspect of an application. It is the applicant's burden to demonstrate that all aspects of its application are reasonable. Similarly, an intervenor's reasons for not contesting an issue are immaterial to the independent reasonableness review the Commission is bound to conduct.<sup>44</sup>

Here, ORA did not dispute whether SCE facilitated an open and transparent RFO bid process<sup>45</sup> because the threshold issue is SCE's unreasonable reliance on its internal PRP program to conduct its RFO. As stated above, the PRP has never been authorized and parties were never afforded the opportunity to evaluate the PRP and its purported objectives in a formal proceeding. Moreover, ORA did dispute the reasonableness of the PRP DG RFO on the basis that SCE inappropriately relied on the PRP to conduct its PRP DG RFO.<sup>46</sup> Thus, the Proposed Decision incorrectly states that ORA did not dispute the fairness of the PRP DG RFO process. Regardless, the reasonableness of the RFO process does not constitute reasonableness upon the resulting contracts themselves.

#### **E. The SunEdison PPAs are not needed for RPS**

The Proposed Decision commits factual error by stating, "[t]he PPA projects do not need to be necessary to the RPS or EPIC endeavors to be reasonable, since both programs are separate from the stated goals of the PRP."<sup>47</sup> This is factually incorrect for numerous reasons. First, as SCE stated, "[it] is not seeking and does not require Commission authorization to conduct internal activities like the PRP."<sup>48</sup> Second, the Proposed Decision finds the PRP is an internal

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<sup>43</sup> D.06-05-016, p. 7. *See also*, D.08-12-058, p. 17.

<sup>44</sup> *See* Public Utilities (Pub. Util.) Code Section 451. "All charges demanded or received ... shall be just and reasonable."

<sup>45</sup> Proposed Decision, p. 16. ORA did address the PRP DG RFO's market conditions and responses. (*See* ORA Brief (Confidential), pp. 13, 15-19.)

<sup>46</sup> ORA Brief (Confidential), pp. 20-23.

<sup>47</sup> Proposed Decision, p. 19.

<sup>48</sup> Reply to ORA Protest, p. 3.

endeavor and is not at issue in this proceeding.<sup>49</sup> Third, it is inconsistent with the Scoping Memo, which asks “Are the PPAs Renewable Portfolio Standard (RPS) eligible and will they fulfill SCE’s Renewable Portfolio Standard (RPS) Category 1 needs.”<sup>50</sup> Last, it is contrary to SCE’s statement that “SCE’s Application seeks approval of the PPAs under SCE’s authorized 2014 and 2015 RPS Procurement Plans and Public Utilities Code Section 399.11 *et seq.*”<sup>51</sup> Thus, stating the PPAs do not need to be necessary to RPS because of the PRP is factually inconsistent with the entire record of the proceeding.

**F. The Proposed Decision erroneously disregards the Scoping Memo’s directive to compare the PPAs to similar sized contracts**

The Proposed Decision errs by disregarding the scope identified in the Scoping Memo. The Scoping Memo asks parties, “[a]re the prices of the PPAs reasonable, compared to other similar projects procured under the RPS program or other procurement mechanisms?”<sup>52</sup> Consistent with the Scoping Memo, ORA performed a detailed analysis to compare the SunEdison PPAs’ prices to similar projects procured under the RPS program and other procurement mechanisms.<sup>53</sup> ORA’s testimony and brief demonstrate that the SunEdison PPAs are not competitively priced when compared to similarly-sized RPS contracts procured under SCE’s 2014 RPS RFP, FiT/ReMAT, RAM 6, and SPVP.<sup>54</sup> The Proposed Decision ignores these comparisons and finds that the PPAs are reasonable compared to a single contract – the Santa Ana project.<sup>55</sup> In stark contradiction to the Scoping Memo’s directive, the Proposed Decision compares the SunEdison PPAs to the SPVP 4 Santa Ana project, “rather than to prices of similarly sized projects procured through SCE’s RPS procurement mechanisms.”<sup>56</sup>

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<sup>49</sup> Proposed Decision, Finding of Fact 4, p. 20.

<sup>50</sup> Scoping Memo, p. 2.

<sup>51</sup> SCE-2, p. 1 [cite omitted].

<sup>52</sup> Scoping Memo, p. 2.

<sup>53</sup> ORA Brief (Confidential), pp. 10-13

<sup>54</sup> ORA Brief (Confidential), pp. 10-13, 16-19.

<sup>55</sup> Proposed Decision, p. 19.

<sup>56</sup> Proposed Decision, p. 19.

The Proposed Decision states:

We find that it is reasonable to compare the prices of the SunEdison PPAs to the price of the SPVP 4 Santa Ana project, which SCE also selected for its ability to offset load in the PRP region, rather than to prices of similar sized projects procured through SCE's RPS procurement mechanisms.<sup>57</sup>

SCE admits<sup>58</sup> and the Proposed Decision finds the “contract for the Santa Ana project has since terminated.”<sup>59</sup> SCE also twice petitioned the Commission to terminate the SPVP program, from which Santa Ana was procured, because it had significant drop in market response and [did] not provide economic benefit to customers.”<sup>60</sup> SCE stated that its SPVP “prices were very costly relative to other competitive options for renewable contracts.”<sup>61</sup> Yet compared to the last SPVP RFO, the SunEdison PPAs' average prices are significantly higher.<sup>62</sup>

Additionally, the Proposed Decision errs by including Conclusions of Law that are contradicted by its findings. Conclusion of Law 2 concludes, “[t]he terms and prices of the SunEdison PPAs are reasonable in light of the objectives served and *compared to similar projects*.”<sup>63</sup> However, Finding of Fact 5 accurately finds, “[t]he prices of the SunEdison PPAs are higher than those of similar sized renewable energy projects procured through other mechanisms.”<sup>64</sup> There is no support to conclude that the prices of the SunEdison PPAs are reasonable compared to similar projects. The record demonstrates that Santa Ana is an improper marker to compare contract prices.<sup>65</sup> Rather, the record demonstrates that the SunEdison PPAs

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<sup>57</sup> Proposed Decision, p. 19 also stating “Based on the low market response for projects in the PRP region that precipitated the PRP DG RFO, it seems reasonable that projects that deliver those locational benefits would be relatively higher in price than projects bid into the procurement mechanisms that did not.”

<sup>58</sup> SCE-2, p. p, lns. 15-16.

<sup>59</sup> Proposed Decision, Finding of Fact 5, p. 21.

<sup>60</sup> SCE's Petition to Modify D.14-06-048 (Petition), pp. 4-5; in A.08-03-015. In D.16-06-044 the Commission granted SCE's petition to terminate the SPVP.

<sup>61</sup> Petition, p. 4.

<sup>62</sup> ORA Brief (Confidential), p. 16-19.

<sup>63</sup> Proposed Decision, Conclusion of Law 2, p. 21 [emphasis added].

<sup>64</sup> Proposed Decision, Finding of Fact 5, p. 21.

<sup>65</sup> ORA Brief (Confidential), pp. 15-18.



are not competitively priced compared to similar sized RPS and other procurement mechanisms.<sup>66</sup>

**G. The Proposed Decision does not establish the SunEdison PPAs are necessary for RPS**

The Proposed Decision errs in stating, “[the PPAs] are eligible renewable energy resources that meet the definition of RPS qualified Category 1 projects”<sup>67</sup> and “can provide additional ‘banking’ or ‘buffering.’”<sup>68</sup> The Proposed Decision’s banking rationale is inconsistent with the Scoping Memo, which asked parties “will [the PPAs] fulfill SCE’s Renewable Portfolio Standard (RPS) Category 1 needs?”<sup>69</sup> ORA’s testimony and brief conclusively demonstrate that SCE does not need the SunEdison PPAs for RPS needs.<sup>70</sup> This is affirmed by the Proposed Decision which also states, “the PPA projects are not necessary for SCE to reach its RPS targets.”<sup>71</sup> Thus, the record shows the PPAs are not needed for SCE’s RPS procurement.

SCE did not request approval of the SunEdison PPAs on the basis that they provide banking value.<sup>72</sup> SCE advanced this banking argument in response to ORA’s testimony, which demonstrated that SCE is exceeding its RPS procurement targets.<sup>73</sup> SCE provided no evidence of its current inventory of banked resources. SCE provided no analysis in support of the need to bank additional resources, such as forecasted RPS positions or strategies for future procurement. Finally, SCE did not demonstrate why the SunEdison PPAs are more appropriate for banking than other lower-priced offers.

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<sup>66</sup> ORA Brief (Confidential), p. 11-13.

<sup>67</sup> Proposed Decision, p. 19.

<sup>68</sup> Proposed Decision, p. 19.

<sup>69</sup> Scoping Memo, p. 2.

<sup>70</sup> ORA Brief (Confidential), pp. 9-10.

<sup>71</sup> Proposed Decision, p. 19.

<sup>72</sup> Application, pp. 16-17.

<sup>73</sup> SCE-3, p. 7; citing ORA-1C, p. 10.

**H. The Proposed Decision's approval of the SunEdison contracts is not supported by its findings**

The Proposed Decision commits legal error because its findings and the record evidence do not support the approval of the Application. In *California Manufacturing Association v. Public Utilities Commission (CalMA)*,<sup>74</sup> the Supreme Court of California (Supreme Court) held:

Findings are essential to "afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily, as well as assist parties to know why the case was lost and to prepare for rehearing or review, assist others planning activities involving similar questions, and serve to help the commission avoid careless or arbitrary action." [Cites omitted]

In *CalMA*, the Supreme Court annulled Decision Nos. 87586 and 87587<sup>75</sup> "for lack of sufficient findings and evidence." Here, similarly, the Proposed Decision contains contradictions, and a lack of sufficient findings and evidence. Specifically, these include but not limited to:

- The Proposed Decision states, "[w]e disagree with ORA's reasoning that the PRP is outside the scope of this proceeding and that SCE therefore cannot justify the reasonableness of its conduct in launching the PRP DG RFO by referencing the PRP's objectives."<sup>76</sup> However, Finding of Fact 4 finds, "[t]he PRP is an internal effort to SCE and is not at issue in this proceeding."<sup>77</sup>
- The Proposed Decision's discussion spends significant time justifying the approval of the SunEdison contracts based on the goals and objectives of the PRP. For example, the Proposed Decision states, "[there] is sufficient evidence to establish that the PPAs will measurable contribute towards accomplishing the PRP's goals [.]"<sup>78</sup> However, the Proposed Decision makes no finding that the PRP

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<sup>74</sup> *California Manufacturing Association v. Public Utilities Commission* (1979) 24 Cal.3d 251.

<sup>75</sup> As modified on petition for rehearing by Decision Nos. 87937 and 87998.

<sup>76</sup> Proposed Decision, p. 17.

<sup>77</sup> Proposed Decision, Finding of Fact 4, p. 20.

<sup>78</sup> Proposed Decision, p. 18.

objectives are reasonable or that the Commission has ever found them reasonable.

- The Proposed Decision states, “[the PPAs] can provide additional ‘banking’ or ‘buffering’ value within SCE’s energy generation portfolio, as well as generally align with the environmental and energy policy goals of California’s RPS legislation.”<sup>79</sup> However, no evidence has been submitted that shows SCE needs to bank resources. Instead, the Proposed Decision states, “[t]he PPA projects are not necessary for SCE to reach its RPS targets.”<sup>80</sup> This is supported evidence submitted in ORA-1C.<sup>81</sup>

### III. CONCLUSION

For all the reasons stated above, the Commission should find the Proposed Decision commits serious factual and legal errors and, therefore, should reject it and deny the two projects at issue.

Respectfully submitted,

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<sup>79</sup> Proposed Decision, p. 19.

<sup>80</sup> Propose Decision, p. 19.

<sup>81</sup> ORA-1C, p. 10.

## APPENDIX A

### ORA'S PROPOSED CHANGES TO THE PROPOSED DECISION FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

#### FINDINGS OF FACT

5. The prices of the SunEdison PPAs are higher than those of similar sized renewable energy projects procured through other mechanisms. ~~They are comparable in price to the Santa Ana project, which SCE procured through its SPVP 4, and which was selected due to its location in the PRP region. The contract for the Santa Ana project has since terminated.~~

6. The SunEdison PPAs are not necessary for SCE to reach its RPS targets. ~~The projects are consistent with statutory requirements for eligible renewable energy resources and contribute towards SCE's RPS goals.~~

7. The projects serve the same substation ~~and are consistent with the research goals of the~~ as the EPIC Investment Plan's IGP. Funding between the PPAs and the IGP ~~does~~ appear not to overlap.

#### CONCLUSIONS OF LAW

2. The terms and prices of the SunEdison PPAs are unreasonable in light of the objectives served and compared to similar sized projects.

3. SCE should not be authorized to recover in rates payments made pursuant to the PPAs.

#### ORDERING PARAGRAPHS

1. The results of Southern California Edison's (SCE's) 2015 Preferred Resources Pilot Request for Offers are denied ~~approved~~. SCE is not authorized to enter into two power purchase agreements with SunEdison and to recover in rates payments made pursuant to these agreements.